

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

RUTH V. BRIGGS,

. Case No. 1:16-cv-248

Plaintiff, .

vs. .

. 601 Market Street

. Philadelphia, Pennsylvania 19106

. July 18, 2018

TEMPLE UNIVERSITY, .

.

Defendants..

TRANSCRIPT OF TRIAL

DAY 3 - P.M. SESSION

BEFORE THE HONORABLE ROBERT F. KELLY

UNITED STATES DISTRICT JUDGE

AND A JURY

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1 AFTERNOON SESSION

2 (Proceedings resume after Luncheon Recess at 1:21 p.m.)

3 (Jury present)

4 THE COURT: Call your next.

5 MS. MATTIACCI: Yes, Your Honor. The plaintiff
6 calls Sandy Foehl to the stand as an of cross.

7 THE COURT OFFICER: Please raise your right hand,
8 place your left hand on the Bible, right here.

9 SANDRA FOEHL, WITNESS FOR THE PLAINTIFF, SWORN

10 THE COURT OFFICER: Please state your full name for
11 the record.

12 THE WITNESS: My first name is Sandra, S-a-n-d-r-a,
13 middle initial A. last name Foehl, F-o-e-h-l.

14 THE COURT: All right. You may proceed.

15 MS. MATTIACCI: May we

16 THE COURT: All right.

17 DIR

18 | BY MS. MATTIACCI:

19 Q Good a

20 A Foehl.

21 Q Okay. Great.

Now you're current

23 A I am.

24 Q And y

25 Compliance Department?

1 A It's Office of Equal Opportunity Compliance, and I am
2 the Director.

3 Q Okay. Thank you.

4 And is it true that you've held this position since
5 2005?

6 A 2009, would be more correct, as to title.

7 Q Did you hold that position as of 2013 and 2014?

8 A Yes.

9 Q Is it correct that your job is to handle complaints of
10 discrimination and harassment?

11 A I'm just -- excuse me. Complaints of unlawful
12 discrimination and harassment, yes.

13 Q Is it true that you have never taken any legal courses?

14 A Not for credit.

15 Q How about in terms of a legal background; do you have
16 any legal background?

17 A No.

18 Q But is it true that Temple has put you in charge of the
19 University's compliance with federal, state, and municipal
20 civil rights laws?

21 A That's correct.

22 Q It's true that, in the Summer of 2012, that you received
23 a complaint of age and sex discrimination from Ruth Briggs,
24 correct?

25 A Ms. Briggs came to talk with me in July of 2012, about

1 concerns in the workplace.

2 Q Specifically involving age and sex discrimination,
3 correct?

4 A She complained of age discrimination, yes.

5 Q Okay. Let's take a look. There's a binder in front of
6 you, it says "Plaintiff's Documents."

7 A Yes.

8 Q Okay. If you can turn to the fourth tab.

9 A (Witness reviews exhibits)

10 Q Do you recognize these two pages of documents as your
11 handwritten notes? The first page is dated July 30th, 2012.
12 That note continues to the second page, and then the third
13 page is August 3rd, 2012.

14 A (Witness reviews exhibit)

15 These are my notes of those dates.

16 MS. MATTIACCI: Okay. Your Honor, I'd move for the
17 admission of P-4.

18 MS. SATINSKY: No objection.

19 THE COURT: It's admitted.

20 (P-4 received in evidence)

21 BY MS. MATTIACCI:

22 Q Okay. Let's show the jury what you wrote here. Now
23 this is in regards to the meeting that you had with Ms.
24 Briggs on July 30th, 2012. Is that correct?

25 A That's correct.

1

2 Q And you -- at the top, it says, "Meeting requested by
3 Ruth Briggs"?

4 A It does.

5 Q And then this first paragraph says:

6 "Ms. Briggs has been in the Department of Computer
7 Information Sciences for the past three years,
8 since September of 2009, working with the
9 Department Chair, Dr. Wu."

10 Did I read that correctly?

11 A That's what it says.

12 Q "George Palladino arranged the temporary placement
13 'on loan from the Dean's Office.' Greg Wacker has
14 history of arrangement."

15 Is that correct?

16 A That's what Ms. Briggs said to me.

17 Q Okay. And then the next paragraph says:

18 "Problems. Dr. Wu yells and says demeaning things;
19 e.g., are you stupid, in Chinese; in China, women
20 your age are done."

21 Do you see that?

22 A I do.

23 Q And then it says:

24 "Ms. Briggs gives Dr. Wu the benefit of the doubt
25 for his remarks, accounting" -- "allowing for

1 cultural differences and difficulty with English."

2

3 Is that correct?

4 A That's what Ms. Briggs said to me.

5 Q Next your notes say:

6 "Writeup for insubordination. Department Secretary

7 Judy Lennon is a thirty-year employee, but not

8 adept with technology. Dr. Wu's instruction to Ms.

9 Briggs, 'Don't help her,' 'Send her to the Dean's

10 Office.' Greg Wacker adds, "'ll discipline you if

11 you help her.' Ms. Briggs' position, of course I'm

12 going to help her."

13 That's what she relayed to you?

14 A That's what Ms. Briggs said to me.

15 (Pause in proceedings)

16 Q She also -- you also wrote:

17 "Dr. Wu gives my work to student worker; e.g., Mary

18 Beth goes to the hotel with Dr. Wu to meet the

19 conference planner."

20 Is that correct?

21 A That's what Ms. Briggs said.

22 Q So she was saying that she used to be the one that would

23 go with Dr. Wu to the conferences, and he was having student

24 workers do that with him?

25 A My notes record that she said to me that the student

1 worker did those chores with Dr. Wu --

2 Q Okay.

3 A -- at the time.

4 Q Okay. And then your notes go on to say:

5 "Salary. My salary level is T-26, but I'm paid at
6 a lower rate than technical T-26. My position is
7 non bargaining unit, no recourse through union.

8 Current job description is Executive Assistant, as
9 in Dean's Office. I believe I'm still paid from
10 Dean's Office Cost Center."

11 Is that correct?

12 A That's what Ms. Briggs related to me.

13 Q And then she said -- and then you wrote:

14 "Performance Evaluation? PDP in 2012, a 1.5, and
15 previous PDPs in 2011, 2010, based on undefined
16 various functions and Dr. Wu's comments."

17 Is that correct?

18 A That's what Ms. Briggs related.

19 Q And then your notes go on to say:

20 "Remedy? Ms. Briggs wants to return to her initial
21 job duties, editing papers, editing web content,
22 supervising. 'I'll oversee front office
23 operations.'"

24 Correct?

25 A I --

1 Q "Clear PDP, functions defined, salary commensurate
2 with job and years in service."

3 And then you wrote:

4 "File age discrimination complaint."

5 And then it says:

6 "I'm scared."

7 So is that relaying that you asked if she was filing an
8 age discrimination complaint, and she replied back that she's
9 scared to do that?

10 A Or she was wondering about filing an age discrimination
11 complaint, and went on to say she was scared.

12 Q Okay. So she was asking about filing an age
13 discrimination complaint, but relayed to you that she was
14 scared, correct?

15 A That's what I recorded; she said, "I'm scared."

16 Q And then, for completeness, the rest of your notes say:

17 "And I'm taking time in August, for which I've
18 requested FMLA, postoperative care of son."

19 And then -- is that what she relayed to you?

20 A Yes, she did.

21 Q Okay. And then your notes say:

22 "Salary and PDP concerns to HR? Human Resources
23 hasn't been helpful. Ask advice of new Interim
24 Dean Michael Klein? Ms. Briggs said she hasn't
25 done so, but I may do so on her behalf."

1 And then is that your signature?

2 A Yes, it is, my initials.

3 Q Okay. So then, when you received this information from
4 Ms. Briggs, and when she's relaying that she believes she's
5 being discriminated against, did you, in fact, do an
6 investigation into this complaint?

7 A I did at a later date. At this point, we discussed what
8 options she had for resolving her concerns.

9 Q Okay. And so why did you not do an investigation into
10 her concerns?

11 A She didn't, at this point, file a formal complaint.

12 Q So she needed to file a formal complaint, in order to
13 have an investigation done?

14 A She needed to tell me she wanted me to proceed with an
15 investigation.

16 Q So are you saying that Temple's policy is that
17 investigation will not be conducted unless the employee
18 specifically says, I want a formal investigation done?

19 A Yes.

20 Q Doesn't Temple have an obligation to ensure that the
21 workplace is free of discrimination and retaliation,
22 regardless of whether a formal request by a specific employee
23 is made or not?

24 A I'll answer that in two parts. We do have an obligation
25 to make sure that the University complies with federal,

1 state, and local regulations prohibiting unlawful
2 discrimination in the workplace. But our own resolution
3 procedures provide for informal resolution and formal
4 complaints. And I need to be directed by an individual who
5 wishes to file a formal complaint that I'm to go ahead and do
6 so.

7 Q And that discretion is given to the person who is
8 complaining, or the victim of the discrimination?

9 A It's the complainant's direction to me that let's me go
10 forward with a formal complaint.

11 Q Okay. So, under Temple's policy, you are -- you're not
12 to go forward with a complaint unless the employee
13 specifically tells you to go forward with the complaint -- I
14 mean with the investigation.

15 A That's correct. I'm hearing one perspective from a
16 complainant, I'm hearing their side of the story. When they
17 tell me I can go forward and conduct an investigation, I do
18 so.

19 Q So let me ask you. If you have, say, a female faculty
20 member comes to you and complains that there is a senior male
21 dean that is, for example, requesting private meetings with
22 her, and saying inappropriate sexual things and requesting
23 massages, but she's very scared to go forward with that
24 complaint and doesn't want an investigation. Are you saying
25 that, therefore, no investigation is done, and nothing is

1 done in that situation?

2 A I don't believe I've said that. I've said that, as in
3 Ms. Briggs' case, I discussed what the options are, what
4 resources there are at the University, to be helpful; what
5 options there are for resolving the concerns. And I let the
6 complainant give me direction as to what he or she wants to
7 do.

8 But in the case of a sexual harassment complaint, we're
9 now obligated, and I will tell an individual that I must
10 report that allegation forward to our Title IX Coordinator.

11 Q So is sexual harassment treated differently than age
12 discrimination?

13 A Only in -- with respect to the Title IX Coordinator know
14 that a report has been made.

15 Q Okay.

16 A It's still up to the individual complainant to decide
17 what, among the choices, are available to him or her, how we
18 proceed.

19 Q All right. Can I have you take a look at P-13 in your
20 binder?

21 A (Witness reviews exhibits)

22 Q Do you see that email? P-13, do you have it there? I
23 can blow it up for you, if that would be easier.

24 A Is that Ruth Briggs to Cameron Etezady? I see it.

25 Q Yes.

1 And this is on February 9th, 2013. Ms. Briggs contacts
2 Mr. Etezady, who is in the General Counsel's Office of
3 Temple, correct?

4 A Yes, he is.

5 Q And she says:

6 I am contacting you to request a confidential
7 conversation to discuss disparate treatment for me,
8 which I believe is related to my age of 58. I am
9 concerned about retaliation. If you are unable to
10 guarantee confidentiality, please say so in your
11 reply. Sincerely, Ruth."

12 Do you see that?

13 A (Witness reviews exhibit)

14 Q I'm just making sure that you're able to read that
15 email?

16 A I can read it, yes.

17 Q Okay. And will you agree with me that it's that many
18 employees are often very scared to come forward with
19 complaints of retaliation and discrimination in the
20 workplace.

21 A That's a little hard for me to judge because, when I
22 hear about them, they have come forward.

23 Q But -- and when they come forward, is it your -- do you
24 often find that those that are coming forward are fearful of
25 retaliation coming their way after complaining?

1 A I think as many who come forward to me are determined
2 that they're going to have their day and be heard, and want
3 me to do an investigation.

4 Q Well, even if they want you to, are you saying that
5 they're -- it's very rare, then, for somebody to be concerned
6 about retaliation?

7 A No, but it -- not retaliation, particularly, but
8 everyone wants to know about the consequences of filing a
9 complaint, and that's part of my responsibility, to explain
10 what a complaint investigation is like, and to tell them what
11 to expect.

12 Q Okay. If you'll look at the email right above that,
13 which is Mr. Etezady's response.

14 A (Witness reviews exhibit)

15 That's dated February 10th.

16 Q February 10th, 2013.

17 A Yes.

18 Q And the part -- I didn't blow it up, but the first line
19 says:

20 "Thank you for trusting me and contacting me with
21 what I'm sure is a very difficult matter."

22 And then he says:

23 "I am happy to speak with you, but while I will
24 keep our conversation confidential, I cannot
25 promise anonymity in the event you raise something

1 that I must investigate further. My obligation is
2 to ensure the University complies with applicable
3 law. I want to assure you, however, that Temple
4 does not tolerate retaliation."

5 Do you see that?

6 A I do.

7 Q So that -- the email from the attorney is saying that,
8 even if she doesn't want to go forward with it, he might have
9 to go forward with it anyway and investigate it, correct?

10 A That's what he has said.

11 Q But that's not your understanding of Temple's policy,
12 correct?

13 A My understanding of Temple policy is to allow the
14 complainant to guide me in what action I take. There are
15 some very rare instances where I will have to say to an
16 individual, I need to take action, regardless of your
17 instructions, and that's in the case of sexual assault, for
18 example, where I at least need to advise our Title IX
19 coordinator.

20 And the other rare exception would be if someone has
21 shared with me a threat of physical harm, either to himself
22 or herself, or to another individual.

23 Q So, absent a sexual assault or a sex -- or a physical
24 harm, Temple will allow a hostile work environment of age,
25 sex, or retaliation to exist in the workplace because the

1 complainant hasn't authorized an investigation, at that
2 point.

3 A Again, that doesn't necessarily follow. What I am
4 hearing from a complainant is one side of the story. I know
5 that there is at least one other side of the story, and
6 perhaps more. It's my obligation to investigate and
7 determine what the facts are.

8 Q So -- okay. So then you will investigate it, if the
9 person comes forward with the complaint.

10 A If the individual says, yes, you may go forward and
11 investigate.

12 Q Okay. We are going to move on.

13 Let's take a look at P-7.

14 A (Witness reviews exhibits)

15 Q Okay. P-7. Do you recognize the bottom as an email to
16 you?

17 A Yes, sending an email from Ruth Briggs, dated September
18 9th, 2012.

19 Q Okay. And she says in here:

20 "Dear Sandy, I'm uncertain about the status of the
21 complaint about which we spoke, regarding my job
22 description, my performance development plan, and
23 addressing my salary to the 2011 maximum salary
24 level, new hire range, for a T-26. I did receive a
25 1.75 salary increase and a one-time one-thousand-

1 dollar bonus, but I heard from other non-bargaining
2 staff members they also received a small salary
3 increase."

4 And then she talks about her salary, as compared to what
5 the minimum and maximum are, and the target.

6 You recall receiving this email, correct?

7 A I do.

8 Q All right. And we can see that, even if -- with this --
9 with the increase, her salary is only \$51,252. Do you see
10 that?

11 A I see that.

12 Q Five hundred and twenty-five dollars.

13 And the maximum for a new hire is \$53,600. So,
14 actually, a new hire coming into a position as -- like hers
15 would be making more money than she would.

16 A That happens.

17 Q Okay. And she was -- and the target midrange for her
18 position was \$60,500, and she was well short of that,
19 correct?

20 A That's what she reported.

21 Q Okay. And then she gave you information about her
22 background and her qualifications, correct?

23 A Yes.

24 Q And what did you do to investigate this issue concerning
25 her salary being underpaid?

1 A At this time, I didn't investigate. I would have
2 advised any individual with a salary issue to please raise it
3 with Human Resources and Compensation; they are the first
4 responders to salary issues.

5 Q Did she relate to you that she was -- believed that her
6 salary was lower than two other males that she knew of in the
7 Department?

8 A She did note that in this communication.

9 Q So did that trigger, for you, a thought that this could
10 be a sex-based pay discrepancy that the Equal Opportunity
11 Compliance Office should look into?

12 A No. Human Resources should go first, with a salary
13 issue.

14 Q Even if there's a sex-based pay discrepancy?

15 A That's an allegation in this communication, and I don't
16 know it to be the case. But Human Resources would also look
17 at that, would look at comparable salaries across the board.

18 Q Did you do anything to investigate whether the
19 discrepancy in pay was a sex-based problem?

20 A Not at this time.

21 Q So then, if we go to P -- we're at P-7. Let's go to P-
22 10.

23 A (Witness reviews exhibits)

24 Q All right. Do you recognize P-10?

25 A I -- this is the first time I've seen P-10.

1 Q Okay. For context, P-10 is an email from February 7th,
2 2013, in which Ms. Briggs sends to Rhonda:

3 "I'm so bullied" -- "I am so bullied and harassed
4 all day. Two people in the Dean's Office tell me
5 that I can find another job. That can't be right.
6 Ruth."

7 And then Rhonda Brown -- who is in Human Resources. Is
8 that correct? Or the Office of Institutional Diversity?

9 A I believe Rhonda's title was Associate Vice President,
10 heading up Office of Multicultural Affairs.

11 Q Okay.

12 A It might have changed by this time to Institutional
13 Diversity.

14 Q Okay. So, in response to the salary issue, you told Ms.
15 Briggs to go see HR, which would have been Deirdre Walton,
16 correct?

17 A Yes.

18 Q Then, in terms of the age and sex comments and
19 hostilities she was receiving from Dr. Wu, you didn't do
20 anything with that because you said she didn't tell you to go
21 forward with a formal complaint.

22 MS. SATINSKY: Objection, Your Honor.

23 Q Is that correct?

24 MS. SATINSKY: Objection, Your Honor, the witness
25 never testified to that.

1 MS. MATTIACCI: I'm asking if that's correct.

2 MS. SATINSKY: Your Honor, she --

3 THE COURT: Sustained as to the objection.

4 BY MS. MATTIACCI:

5 Q So, here, with the -- in terms of this particular email,
6 it appears that Ms. Brown is advising Ms. Briggs to go see
7 you. Is that correct?

8 A That's what it appears to be.

9 Q Okay.

10 MS. MATTIACCI: Now, if we could go to P-12.

11 BY MS. MATTIACCI:

12 Q This is the -- we were just looking at this email a
13 little bit ago.

14 A Yes.

15 Q So, the other part, which -- when he write -- Mr.
16 Etezady writes back and says it's his obligation to ensure
17 that the university complies with applicable law, he also
18 advises that he will be attending a trial for most of next
19 week and so he is out and his time is extremely limited.

20 And then, in the next paragraph, he says:

21 "I would also recommend that you speak with Sandy
22 Foehl or Tracy Hamilton in EEOC."

23 Do you see that?

24 A I do.

25 Q So, Mr. Etezady refers Ms. Briggs back to you. Is that

1 right?

2 A He refers Ms. Briggs to me or Ms. Hamilton. I don't
3 know whether or not he would have known that I had previously
4 spoken with Ruth Briggs.

5 Q Okay. But this is now a different period of time. This
6 is now February of 2013 and she has clearly brought a
7 complaint of age discrimination and retaliation in her email,
8 correct?

9 A She does say she believes it's related to my age.

10 Q Yes. And then so Mr. Etezady refers her to you?

11 A Yes.

12 Q Okay.

13 MS. MATTIACCI: Let's go to P-14.

14 BY MS. MATTIACCI:

15 Q I'm sorry, let me see if I can skip ahead here. Okay.
16 If we go to P-14 --

17 A Yes.

18 Q -- okay, P-14 is now the next in the same time frame the
19 next day. If you go to the bottom of Temple 196, Mr. Etezady
20 says:

21 "I apologize for doing this by email. I'm out of
22 the office most of the week. I was unclear about
23 your email. Are you uncomfortable with Sandy,
24 Tracy, or Deirdre. Any of the three would be able
25 to accomplish a mediation that you requested. I

1 could also refer you to Fay Trachtenberg in my
2 office who could provide you with more prompt
3 attention. If none of those options are
4 acceptable, let's set up a meeting to talk through
5 those things."

6 So, he's offering her some options there, correct?

7 A Yes.

8 Q Did he ever make you aware that he was advising her at
9 this time concerning those complaints?

10 A No.

11 MS. MATTIACCI: All right. Let's go to P-34.

12 BY MS. MATTIACCI:

13 Q Do you see P-34?

14 A I do.

15 Q And this is an email from Ruth Briggs to you:

16 "I want to schedule an appointment to file a
17 complaint."

18 Do you see that?

19 A Yes, I do. It's dated a year later.

20 Q Well, it's dated February 25th, 2014, and she says:

21 "I tried desperately to make my work situation
22 tolerable while my family and friends say I need to
23 take proactive defense against my supervisor and
24 two managers in the dean's office, but I have
25 reached my breaking point."

1 And then she advises that she plans to file an EOC
2 internally and have already had a phone intake with the EEOC.
3

4 Do you see that?

5 A I do.

6 Q Okay. So, up until this time, between the time that you
7 spoke with Ms. Briggs, in which she relayed to you the
8 complaints of age and sex discrimination, at this point, had
9 you had any conversations with anybody in regards to Ms.
10 Briggs' complaints?

11 MS. SATINSKY: Objection, Your Honor; misstates the
12 witness' testimony. The witness did not testify that there
13 were complaints of sex discrimination.

14 MS. MATTIACCI: Yes -- yes, she did in the
15 beginning.

16 MS. SATINSKY: No, she said there was a complaint
17 of age discrimination.

18 BY MS. MATTIACCI:

19 Q Miss -- I can clarify, because Ms. Briggs -- we looked
20 at it -- I mean, Ms. Foehl, we looked at an email in which
21 Ms. Briggs was complaining of sex-based pay discrepancy,
22 correct?

23 A She raised concerns about her will salary.

24 Q And she's relayed her concerns in the context that she
25 felt that she was underpaid as a woman, correct?

1 A As I recall, the memo that we looked at, she pointed out
2 what she believed was low-paid salary, less than it should
3 be. She said that in that email that there were two men in
4 the dean's office who were paid better than she. I don't
5 know if that was the case; that's what she alleged.

6 Q Okay. So, between that time and the time of February
7 25th, 2014, did you speak with -- well, let's just start with
8 Deirdre Walton in HR in regards to complaints that Ms. Briggs
9 was making in the workplace?

10 A Soon after my initial conversation with Ms. Briggs, I
11 asked Deirdre Walton if she had any interaction with Ms.
12 Briggs, because some of the concerns -- or Ms. Briggs had
13 raised a salary concern with me.

14 Q Let's take a look -- so, you did tell Ms. Briggs about
15 her salary concerns, correct?

16 A I think you're --

17 THE COURT: Did you tell Ms. Briggs?

18 MS. MATTIACCI: I'm sorry. I'm so sorry, Your
19 Honor.

20 BY MS. MATTIACCI:

21 Q Ms. Walton?

22 A I asked Ms. Walton if she had any interaction with Ms.
23 Briggs because Ms. Briggs had brought a concern to me about
24 salary.

25 Q Okay. I want to find that email real quick.

1 MS. MATTIACCI: P-6.

2 BY MS. MATTIACCI:

3 Q So, this is -- P-6 -- this is on the heels of when Ms.
4 Briggs came to you and you sat with her and you took those
5 handwritten notes in which she said: Age discrimination,
6 scared. And then she relayed to you that she felt she was
7 underpaid compared to other males and she relayed to you the
8 hostility that she was experiencing with Dr. Wu.

9 So, it's right after this, correct?

10 A That's correct.

11 Q And at this point in time, your testimony is you
12 couldn't investigate Ms. Briggs' complaints, because she
13 didn't formally request an investigation into her complaints,
14 correct?

15 A She didn't direct me to at the time.

16 Q But you did do an investigation into Ruth Briggs at that
17 time, didn't you?

18 A No.

19 MS. MATTIACCI: Well, let's take a look at P-6.

20 BY MS. MATTIACCI:

21 Q This is an email that you sent to Deirdre Walton and
22 Eric Brunner, on August 3rd, 2012, correct?

23 A That's correct.

24 MS. MATTIACCI: I move for the admission of this
25 document, Your Honor.

1 THE COURT: There's nothing on the screen.

2 MS. MATTIACCI: I didn't -- because it wasn't admit
3 it, I just wanted to admit it, P-6.

4 MS. SATINSKY: I have no objection, Your Honor.

5 THE COURT: All right. It's admitted.

6 BY MS. MATTIACCI:

7 Q So, the note that we just looked at were August -- July
8 30th, 2012. Now, in August 30th, 2012, you write:

9 "Deirdre and Eric, do either of you have some
10 history with Ruth Briggs in the College of Science
11 and Technology, especially, since her assignment to
12 the Department of Computer Information Sciences; if
13 so, will you share?"

14 So, you were looking for information on Ruth Briggs,
15 correct?

16 A Ms. Briggs had raised a concern about salary with me.
17 She had also raised a concern about her performance
18 evaluations. I was asking my colleagues if she had brought
19 those concerns to their attention, which would be an actual
20 place to make a report about salary and performance
21 evaluations.

22 Q Did you send a similar email in regards to asking
23 anybody if they had some history with Dr. Wu and the way that
24 she treated people in the workplace?

25 A Not at this time.

1 Q Why not?

2 A Ms. Briggs had brought to me concerns about her current
3 workplace. She hadn't said to me, Go investigate. I don't
4 report or I don't pursue individual's concerns, allegations
5 until they tell me to do so. I want individuals to
6 understand that when they authorize me to do an
7 investigation, I'm carrying information that they give to me
8 and I want them to understand what can follow from that.

9 So, when ready to do so, I carry their reports forward
10 and I ask for a response to those concerns. Ms. Briggs
11 hadn't told me to do so at this time.

12 Q Did Ms. Briggs tell you to email Deirdre and Eric to
13 find out what they thought about her history?

14 A Would you repeat the question?

15 Q Yes. Did Ms. Briggs tell you to reach out to Deirdre
16 and Eric and find out if they had some history with her in
17 the College of Science and Technology?

18 A Ms. Briggs raised a salary concern with me and she a
19 raised a concern about her performance evaluations. I
20 reached out to my colleagues who would have some information
21 about that, that might be helpful to me in knowing how to
22 advise Ms. Briggs.

23 If she hadn't taken those concerns forward to Human
24 Resources, she needed to do so. If she had, I needed to know
25 that. I don't need to cover ground that's already been

1 covered.

2 Q Okay. But that's not what it says. It just says, "some
3 history." Isn't that correct?

4 A It is an inquiry. What can you tell me, if anything?

5 MS. MATTIACCI: Okay. Let's go back to P-4.

6 BY MS. MATTIACCI:

7 Q Because you made some handwritten notes of the
8 conversation that you had in response that email. This --
9 these are a continuation of your notes, correct? We're
10 looking at the third page of P-4.

11 A Those are notes from August 3rd.

12 Q August 3rd. And that's the same date of the email that
13 we just looked at when you reached out to Deirdre and Eric,
14 asking if they had some history with Ruth Briggs, correct?

15 A Correct.

16 Q And your notes say, "Phone conversation with Eric
17 Brunner." What does that mean? Is it HR learning or HP
18 learning?

19 A HR, Human Resources.

20 Q Okay. So, he's with Human Resources, correct?

21 A Yes.

22 Q Learning and development, in regards to Ruth Briggs.
23 Some performance criticisms were made in previous PDPs. She
24 never had a 3.0 rating. Mr. Brunner's recommendation to Ms.
25 Briggs was to have a conversation with her supervisor,

1 clarify with him what he expects in her work, correct?

2 A That's what I noted.

3 Q And is that what Mr. Brunner told you?

4 A Yes.

5 Q And what was your takeaway from that conversation?

6 A That some of these issues had been raised before with
7 Eric Brunner in Human Resources and some advice had been
8 given to Ms. Briggs.

9 Q And were you satisfied that that advice was sufficient
10 to alleviate Ms. Briggs' concerns concerning her supervisor?

11 A I didn't come to any conclusion at this point.

12 Q And what did you do to try to reach a conclusion?

13 A Waited for further direction from Ms. Briggs.

14 MS. MATTIACCI: Can you spell turn to P-38.

15 BY MS. MATTIACCI:

16 Q I can put it up on the screen if it's easier for you to
17 see it there.

18 A I'm actually better off with paper.

19 Q Oh, okay. So, P-38 are a series of emails and the
20 second from the top is from recognition to Deirdre. The
21 subject is: Urgent. Please contact me on Monday and it's
22 dated March 25th, 2014:

23 "Deirdre, I do not know how to respond to this
24 email. I'm drowning here. I have reached out to
25 you numerous times and waited and waited. This is

4 And then she goes on about some of the details that the
5 jury has heard a lot of already. And then that email was
6 forwarded to you on March 25th, 2014. Is that correct?

7 A Yes.

8 Q And, in fact, did you have a discussion with Ms. Walton
9 in regards to what was relayed in the email?

10 A No.

11 Q Why not?

12 A I think that at about this time, I had a similar
13 communication from Ruth Briggs and since she, again, was
14 raising issues about -- well, similar issues -- same issues,
15 I had directed her to Deirdre Walton in the Human Resources
16 Office. So, this information from Ms. Walton was confirming
17 to me that there had been an ongoing conversation between Ms.
18 Briggs and Ms. Walton.

19 Q But the communication from Ms. Walton to you says, "And
20 for discussion." So, did that indicate to you that she
21 wanted to discuss it with you?

22 A It could. It didn't necessarily mean that discussion
23 took place right away. I don't remember whether or not we
24 discussed it at that time.

25 Q Okay. You did have a meeting with Ms. Briggs on April

1 1st, 2014. Is that correct?

2 A I did.

3 Q And that meeting was at approximately ten o'clock in the
4 morning?

5 A It was a morning meeting. It could have been ten
6 o'clock.

7 Q Okay. And in that meeting, Ms. Briggs, again, relays to
8 you complaints of age and sex discrimination, correct?

9 A Ms. Briggs, at that time, said to me that she wanted me
10 to conduct an investigation and I agreed to do so.

11 Q She said, and, specifically, her claims of sex and age
12 discrimination, correct?

13 A Age discrimination, I clearly remember. I remember that
14 she had suggested sex discrimination, with regard to the
15 salary issue.

16 Q Okay. Let's take a look at the notes from that meeting.

17 MS. MATTIACCI: If we could turn to P-44.

18 BY MS. MATTIACCI:

19 Q Do you recognize these as your notes from the April 1st
20 meeting?

21 A Yes.

22 MS. MATTIACCI: Your Honor, I move for the
23 admission of P-44.

24 MS. SATINSKY: No objection.

25 THE COURT: They're admitted.

1 (P-44 received in evidence)

2 BY MS. MATTIACCI:

3 Q All right. These are your notes meeting with Ms.
4 Briggs. The first thing it says is, "Age, standard for me,
5 extraordinary." And then on the right-hand side, "No
6 contract coverage," meaning she was not in a union, so she
7 had no protection from a union. Is that correct?

8 A That's correct.

9 Q She says, "Written up 1/20, written up for being late --
10 overslept." And then it says, "Send through to DiMeo."
11 Do you know what that refers to?

12 A As best I can recall, she was reporting that she was
13 disciplined for being late and I'm not quite sure whether or
14 not she was -- she related to me that Drew DiMeo -- said that
15 she had been late or Drew DiMeo was the one who had written
16 her up.

17 Q And then it says, "Called in and reached student
18 worker."

19 Do you see that?

20 A Yes.

21 Q And then there's -- I can't read that on your copy -- I
22 don't know if you can see it on yours, what that last word
23 is?

24 A No, I can't see the last word either.

25 Q "Always confrontational with me, coming in late

1 intentionally on days scheduled for meetings and
2 failed to call in, failed to follow our department
3 procedure."

4 Was she referring to Drew DiMeo in this COL?

5 A She was relating to me what she had been disciplined
6 for, what the criticisms were and I don't remember whether or
7 not the criticisms were coming from Dr. Wu or Dr. DiMeo --
8 I'm sorry -- Drew DiMeo.

9 Q So, you're saying you have a clear recollection that she
10 was relaying to you that she was being disciplined for coming
11 in late intentionally on days scheduled for meeting and then
12 failing to call in?

13 A That's what she related to me.

14 Q Then it says:

15 "First six months, Hailey King, out three days
16 without calling in. Contract?"

17 What did that mean?

18 A I remember that Hailey King was the individual with whom
19 she was comparing herself and saying that her discipline was
20 unfair. I'm not quite sure whether or not she was -- the
21 contract with the question mark means that Ms. King was
22 covered by a union contract.

23 Q Okay. Let's go to the next part:

24 Tenth floor location, works for Ruth can concentrate on
25 proofreading, but says has been diminished doing financial

1 records. Some sits in -- some sits in Ruth's meeting with
2 Dr. Wu -- oh, Drew sits in Ruth's meeting with Dr. Wu, asks
3 Deirdre about bidding and checked box in regards to active
4 discipline, and then your notes.

5 Do you see that?

6 A I see that.

7 Q So, this is the entirety of your notes that you took in
8 regards to the meeting in which Ms. Briggs relays to you that
9 she wants to file a complaint of age and sex discrimination?

10 A These were new matters that Ms. Briggs was relating to
11 me on April 4th, 2014.

12 Q Okay. So, you were going to add these to your other
13 notes, the ones that we looked at previously?

14 A I keep a file and all the information acquired goes into
15 the one file.

16 Q Okay. Now, after you -- she left this meeting, Ms.
17 Briggs walked out of the meeting with you and was called into
18 a meeting with Mr. Wacker and Ms. Walton, correct?

19 A I didn't know that at the time.

20 Q Do you now know that she walked out of the meeting and
21 was called into a meeting with Mr. Wacker and Ms. Walton and
22 was terminated?

23 A No. The information I had came later that day from Ms.
24 Briggs, herself, who told me that her employment was ending.

25 Q Okay. So, you're saying that as of the time you had the

1 meeting with Ms. Briggs on April 1st, you had no idea that
2 Ms. Briggs was going to be terminated on that day?

3 A None.

4 Q Even though we just looked at an email from March 25th,
5 where you were copied -- you were forwarded a an email from
6 Ms. Walton that said, "FYI, for discussion" a week earlier?

7 A Correct.

8 MS. MATTIACCI: Can you take a look at P-55.

9 BY MS. MATTIACCI:

10 Q Do you see that email?

11 A I do.

12 Q This is emails between you and Dr. Wu, correct?

13 A Correct.

14 Q They are dated August 8th, 2011 -- I mean, 2014?

15 A August 8th and later.

16 Q August 8th and later, okay.

17 MS. MATTIACCI: Your Honor, I move for the
18 admission of P-55.

19 MS. SATINSKY: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (P-55 received in evidence)

22 BY MS. MATTIACCI:

23 Q Okay. Let's go down to the bottom one, which is the
24 first one in the chain. This is you to Dr. Wu and this is in
25 August of 2014, correct?

1 A Correct.

2 Q "Dr. Wu, there's a particular allegation in Ruth
3 Briggs' complaints to the United States Equal
4 Employment Opportunity Commission that I need to
5 review with you. Will you give me a few minutes in
6 person or by phone to go over Ms. Briggs' claim.
7 Please suggest a day and time to do so. Thank you
8 for your continuing assistance."

9 Do you see that?

10 A I do.

11 Q Okay. So, now, at this point, this is about four months
12 after Ms. Briggs was terminated?

13 A Yes.

14 Q And this is the first time that you've gone down to talk
15 to Dr. Wu about Ms. Briggs' claims?

16 A I'm not sure that's accurate, but I would have to
17 refresh my memory from the record. My own recollection is
18 that I started my investigation in April, but by August, Ms.
19 Briggs' complaint to the U.S. Equal Employment Opportunity
20 Commission had been received by Temple University.

21 Q Okay. So you believe that you may have talked to Dr. Wu
22 even earlier than this?

23 A Yes, that's my recollection.

24 Q And when you talked to Dr. Wu, you relayed to him that
25 Ms. Briggs was bringing complaints against him for age and

1 sex discrimination, correct?

2 A When I met with Dr. Wu, I would have related all of the
3 allegations that Ms. Briggs had made about his treatment of
4 her.

5 Q And that would have been sometime between April 2014 and
6 August of 2014?

7 A Yes.

8 Q Now, speaking to Dr. Wu about Ms. Briggs' claims of
9 discrimination and retaliation was something that you could
10 have done while Ms. Briggs was still working there, correct?

11 MS. SATINSKY: Objection, Your Honor. The witness
12 didn't testify that there was a claim of retaliation.

13 MS. MATTIACCI: Okay.

14 THE COURT: Sustained.

15 BY MS. MATTIACCI:

16 Q You -- we did review an email in which Ms. Briggs said
17 that she had a claim of retaliation. Do you recall that?

18 A Wasn't that the email with Cameron Etezady?

19 Q Yes.

20 A Well, I don't recall that Ms. Briggs raised an issue of
21 retaliation with me up through our conversations through
22 April 1st.

23 Q Okay. Let me just state it more generally, then. Prior
24 to Ms. Briggs being terminated, you could have spoken to Ms.
25 -- to Dr. Wu about Ms. Briggs' claims, correct?

1 A When Ms. Briggs indicated that I should conduct an
2 investigation, yes, I could.

3 Q But because you're saying that you didn't get an
4 official statement from her to do so, that's the reason that
5 you were not able to speak with Dr. Wu?

6 A On April 1st, when she told me that she wished to file a
7 formal complaint and have me investigate, I initiated a
8 complaint.

9 Q I understand that. But my question was just, you are --
10 your testimony is, while Ms. Briggs was still employed, you
11 were unable to speak with Ms. -- Dr. Wu about her complaint
12 because Ms. Briggs didn't give you an official statement
13 telling you to go forward with the investigation. Is that
14 your position?

15 A I'm -- I'm not sure that I agree with your choice of
16 words. It's not that I couldn't. It's that the procedure or
17 the procedure that guides my office is to move on the
18 direction of the complainant and that's what I did.

19 When Ms. Briggs came to me on April 1st, 2014, she was
20 employed, so far as I knew.

21 MS. MATTIACCI: Okay. And I believe we already
22 admitted P-55 into evidence. Is that correct?

23 MS. SATINSKY: Yep.

24 BY MS. MATTIACCI:

25 Q Okay. And then you can see here, there's a series of

1 emails that go back and forth between you and Dr. Wu about
2 scheduling the meeting to meet with him in August of 2014.
3 So, you -- maybe you met with him earlier, but this could
4 have been an additional meeting with Dr. Wu. Is that
5 correct?

6 A Yes.

7 MS. MATTIACCI: I don't have any further questions,
8 Your Honor.

9 MS. SATINSKY: Your Honor, may we have the Court's
10 indulgence for a minute?

11 THE COURT: Yes.

12 (Pause in proceedings)

13 CROSS-EXAMINATION

14 BY MS. SATINSKY:

15 Q Good afternoon, Ms. Foehl.

16 A Hello.

17 Q I just have a few questions for you. You testified
18 earlier that you conducted an investigation when Ms. Briggs
19 told you to do so on April 1st, 2014?

20 A Yes.

21 Q Did you reach a conclusion as part of that
22 investigation?

23 A Yes.

24 Q What was your conclusion?

25 A I concluded that there was no violation of Temple

1 University policy prohibiting discrimination on the basis of
2 age or gender.

3 Q Did you communicate that to Ms. Briggs?

4 A That's the usual practice. What I don't remember is her
5 having filed the agency complaint made a difference in this
6 case.

7 Q Ms. Foehl, during the time that Ms. Briggs was employed
8 at Temple, did you communicate with Greg Wacker about the
9 content of your communications with Ms. Briggs?

10 A No, I did not.

11 Q During the time that Ms. Briggs was employed at Temple,
12 did you communicate with Dr. Wu about the content of your
13 communications with Ms. Briggs?

14 A No, I did not.

15 Q During Ms. Briggs' employment at Temple, did you
16 communicate with Drew DiMeo about the content of your
17 communications with Ms. Briggs?

18 A No, I did not.

19 Q During Ms. Briggs' employment at Temple, did you
20 communicate with Deirdre Walton about the content of your
21 communications with Ms. Briggs?

22 A No.

23 MS. SATINSKY: Your Honor, I have no further
24 questions.

25 MS. MATTIACCI: No questions, Your Honor.

1 THE COURT: You may step down. Thank you.

2 (Witness excused)

3 THE COURT: All right. Yes?

4 MS. MATTIACCI: Your Honor, we have no more live
5 witnesses. We have a very short read-in to do, about half a
6 page.

7 THE COURT: A deposition read-in?

8 MS. MATTIACCI: Yes.

9 THE COURT: Okay. Do you want to do that now?

10 MS. SATINSKY: No objection, Your Honor.

11 MR. HARRIS: We have no objection. We just don't
12 know what the cuts are.

13 THE COURT: Have you gone over them? All right.

14 MS. MATTIACCI: They're super short. Do you want
15 to look at them real quick?

16 MR. HARRIS: Yes, please.

17 (Counsel confers.)

18 THE COURT: Do you want to tell us who these --

19 MS. MATTIACCI: Yes. I'm just going to read very
20 small portions of Dr. Wu's deposition and the highlighted
21 parts are the parts that we're going to read into the record.

22 THE COURT: I think, as you heard before, a
23 deposition is taken of a witness. It's taken down by a
24 stenographer, word for word. The person is under oath and
25 subject to cross-examination. It's done -- it's not in my

1 presence, but in the presence of counsel representing the
2 parties. All right.

3 MS. MATTIACCI: Thank you.

4 The question to Dr. Wu:

5 "Are you generally familiar within your capacity as
6 a manager that there are federal and state laws that protect
7 individuals from certain types of discrimination?

8 "Witness: Yes, I know that.

9 "And are you familiar within your capacity as a
10 manager at Temple that Temple has anti-discrimination and
11 anti-retaliation policies?

12 "Yes.

13 "Do you consider these policies of anti-
14 discrimination and anti-retaliation important?

15 "Oh, yeah, very important.

16 "Why?

17 "The reason that people -- that we should not
18 discriminate people based on age, gender."

19 And then the last one:

20 "Did you ever yell in Chinese in the workplace?

21 "Answer: Yes, sometimes with my students, Chinese
22 students."

23 That's all.

24 THE COURT: All right.

25 MS. SATINSKY: Your Honor, may we see you at

1 sidebar, please?

2 THE COURT: Yes.

3 (Sidebar)

4 THE COURT: What's wrong with him yelling at his
5 students in Chinese?

6 MS. MATTIACCI: He said he didn't. It's just a
7 contradiction. He said, I never ever yell.

8 THE COURT: Oh, okay.

9 MS. MATTIACCI: They said he did.

10 THE COURT: I thought that was a new violation.

11 MR. MUNSHI: It is not.

12 THE COURT: Oh, yes?

13 MS. SATINSKY: Your Honor, if I may? I'd like to
14 make a motion for judgment as a matter of law under Rule
15 50(a).

16 THE COURT: Might as well send the jury out to --

17 MS. SATINSKY: I think so.

18 (Sidebar concluded)

19 THE COURT: At this time, would the jury go to the
20 jury retirement room, please.

21 (Jury excused)

22 MS. SATINSKY: Yes, Your Honor.

23 As I indicated at sidebar, on behalf of the
24 defendant, Temple University, now that plaintiff has closed
25 her case, I'd like to move for judgment as a matter of law,

1 pursuant to Rule 50(a) of the Federal Rules of Civil
2 Procedure.

3 Judgment for Temple is appropriate here because
4 there is no legally sufficient evidentiary basis for the jury
5 to find for Ms. Briggs on her claims of age discrimination,
6 sex discrimination, retaliation, age-based harassment, and
7 sex-based harassment.

8 To the standard under Rule 50(a):

9 "A mere scintilla of evidence is insufficient to
10 proceed beyond judgment as a matter of law. The
11 question is not whether literally there is no
12 evidence supporting the party against whom the
13 motion is directed, but whether there is evidence
14 upon which the jury could find a verdict for that
15 party."

16 Beginning with Ms. Briggs' discrimination claims,
17 the evidence at trial is insufficient to support a claim of
18 age discrimination or gender discrimination, under Title 7 of
19 the ADEA and the PRHA.

20 Your Honor, Dr. Wu's supposed comment about women
21 in China don't opportunity direct evidence of age or gender
22 discrimination. The only comment Ms. Briggs testified Dr. Wu
23 made to her about her age was that, "In China, we put women
24 out to pasture at 55."

25 That's according to Ms. Briggs' testimony at trial

1 on the morning of July 17th, 2018, at Page 31, Lines 12 to
2 13. This single comment does not prove the existence of
3 discrimination without inference or presumption, as required
4 to constitute direct evidence; see, Glanzman v Metropolitan
5 Management Company, 391 F.3rd 506 (3d Cir. 2004).

6 To constitute direct evidence, the evidence must
7 prove, without inference or presumption, that the
8 decision-maker can place substantial negative reliance on the
9 Plaintiff's age or gender in reaching their decision. Even
10 if true, this one isolated, vague comment from Dr. Wu is not
11 direct evidence of age or gender discrimination.

12 Your Honor, if I may cite you to a case called
13 Cellucci v RBS Citizens of North America, 987 F.Supp. 2d 578
14 (2013) E.D. Pennsylvania, by Judge Robreno.

15 In that case, the plaintiff alleged that her
16 supervisor asked her several times whether she planned to
17 retire, commented she probably had a fat 401(k) and a pension
18 and told the plaintiff that the bank is changing and it needs
19 new, younger faces. The defendant in that case was a bank.

20 The Court concluded that although the combination
21 of retirement questions and the "younger faces" comment could
22 be age-based bias, those comments, because they had no
23 inference or presumption, don't meet the rigorous direct
24 evidence requirement.

25 Also pertinent to that Court's decision was the

1 time that elapsed between the alleged comments and the time
2 of the adverse employment action. In that case, it was about
3 a year.

4 Here, the alleged time difference between Dr. Wu's
5 one single comment and the end of Ms. Briggs' employment was
6 three years; therefore, if Ms. Briggs is to prove a prima
7 facie case of discrimination, she must do so using
8 circumstantial evidence under the McDonnell Douglas tests.

9 Absent direct evidence, as Your Honor is well
10 aware, claims of discrimination are analyzed under the
11 familiar burden-shifting framework set forth in McDonnell
12 Douglas, 411 U.S. 792, 1973. Gender and age-discrimination
13 claims under the Pennsylvania human relations act are
14 analyzed using the same framework as Title 7 and the ADEA.

15 Under this framework, if Ms. Briggs establishes a
16 prima facie case, the burden shift to Temple to articulate a
17 legitimate, non-discriminatory reason for the challenged
18 employment decision. Then, the burden shifts back to Ms.
19 Briggs, who has the ultimate burden to prove that the proper
20 reason was pretense for discrimination.

21 To establish a disparate treatment claim, under the
22 ADEA and PRRA, based upon age, Ms. Briggs must prove that age
23 was the but-for cause of her termination. That's from Gross
24 v FBL Financial Services, Inc., 557 U.S. 167 (2009).

25 Ms. Briggs, likewise, as I said, must prove that

1 age was the but-for cause of her termination to prevail on
2 her claim of age discrimination, under the PHRA and that's
3 from Carter v Mid-Atlantic Healthcare, LLC, 228 F.Supp. 3d
4 495. It's an Eastern District case from 2013.

5 To establish a prima facie case, Ms. Briggs must
6 prove four elements. First, she must show she's a member of
7 a protected class. Second, she must show she was qualified
8 for her position. And third, she must show that she suffered
9 an adverse employment action. Finally, she must show that
10 the circumstances surrounding the adverse employment action
11 give rise to an inference of discrimination.

12 That is from Jones v Southeastern Pennsylvania
13 Transportation Authority, 796 F.3d 323, (3d.Cir. 2015) here,
14 Temple does not dispute that Ms. Briggs was a member of a
15 protected class, however, Ms. Briggs cannot establish a prima
16 facie case of age discrimination or gender discrimination,
17 because she cannot show the second, third, and fourth
18 elements required from her prima facie case.

19 First, Ms. Briggs was not qualified for her
20 position. She cannot establish that she was qualified for
21 her position at the time of her discharge. As she testified,
22 she didn't understand Dr. Wu's job. She didn't understand
23 allocations of time that Dr. Wu spent on portions of his job.

24 Her repeated and admitted mistakes in violations of
25 Temple's policy rendered her unqualified to remain in her

1 position. There are a number of cases that support that
2 position, including Nelson v DeVry, Inc.; it's 2009 U.S.
3 Dist. Lexis 38161; it's an Eastern District case from April
4 23rd, 2009; Hairston v Runyon, that's a 1997 case from the
5 Eastern District at 1997 WL 798240.

6 During the trial in this case, Ms. Briggs admitted
7 that she was consistently rated below average and that the
8 low average was the highest performance rating that she
9 received during her tenure at Temple. That's at the trial
10 transcript from July 17th, 2018, the p.m. session, at Page
11 30, Line 6 through 12, Page 46, Lines 4 through 9, Page 47,
12 Line 22 to Page 48, Line 28 and Page 102, Lines 9 to 21.

13 Ms. Briggs also admitted at trial that the highest
14 score that she received on a performance evaluation was a
15 2.91, still a below-average score, and she received this
16 score from Dr. Wu.

17 The undisputed evidence shows that Ms. Briggs was
18 disciplined and discharged because of her performance
19 deficiencies and repeated violation of Temple's legitimate
20 procedures; therefore, she cannot show that she was qualified
21 for her position, cannot establish a *prima facie* case, and
22 cannot prevail on a claim of age or gender discrimination.

23 Ms. Briggs cannot prove the next element of a *prima*
24 *facie* case of age or gender discrimination, because she did
25 not suffer an adverse employment action. The record is clear

1 that Ms. Briggs' employment was not terminated; rather, she
2 resigned from her employment at the university. On April
3 3rd, 2013, Ms. Briggs sent Ms. Walton an email that was
4 testified to extensively at trial, wherein she stated, "It is
5 with great sadness that I resign from my position, executive
6 assistant in the Department of Computer and Information
7 Sciences in the College of Science and Technology, effective
8 April 1, 2014."

9 That is Defendant's Exhibit 23. It's at the trial
10 transcript from the afternoon session of July 17th, 2018,
11 Page 61, Lines 4 through 24.

12 Ms. Briggs testified she was told she could resign
13 and that was offered to her by Ms. Walton and Mr. Wacker.
14 That is also at the afternoon session of July 17th, 2018,
15 Line -- Page 61, Line 20 to Page 62, Line 6.

16 On August 14th, 2015, more than a year later, when
17 speaking with a friend and former can colleague in the
18 Facebook posts that were showed at trial in Exhibit D-34, Ms.
19 Briggs took issue with rumors that Temple fired her for
20 wrongdoing and insisted that, "My reason for my separation is
21 because I resigned." Again, that's at Exhibit D-24 -- D-34.

22 Ms. Briggs also testified at trial that when she
23 interviewed at the Community College in Philadelphia, she
24 told the woman in her interview that she resigned from Temple
25 because she was asked to resign. That is from the morning

1 session of July 17th, 2018, Page 116, Line 22 to 25.

2 Ms. Briggs cannot establish the final element of a
3 *prima facie* case because she cannot prove an inference of
4 discrimination, based on her age or gender.

5 Ms. Briggs' discrimination claims are essentially
6 premised on two facts: one, Dr. Wu's comment -- alleged
7 comment regarding women in China and, two, her contention
8 that her co-worker, Hailey King, was disciplined less
9 severely for an unexcused absence. First of all, to the
10 extent that Ms. Briggs contends that Hailey King was treated
11 more favorably than she was, Ms. Briggs cannot sustain her
12 burden on a gender discrimination claim because Ms. King is
13 also a woman and so she's identified a woman in the same
14 protected class who was treated more favorably than she was,
15 not somebody outside of her protected class that was treated
16 better than she was.

17 Additionally, the situation that she compares
18 herself to and Ms. King are not the same. To rely on a
19 comparator, Ms. Briggs must establish that other employee's
20 -- that the other employee's acts were of comparable
21 seriousness to her own infraction and that she and the other
22 employee engaged in the same conduct, without such
23 differentiating or mitigating circumstances that would
24 distinguish their conduct or the employer's treatment of them
25 for it. That's *Anderson v Haverford College*, 868 F.Supp.

1 741, (E.D. Pa. 1994).

2 The undisputed evidence presented at trial is that
3 Ms. King's unexcused absences occurred during a hurricane,
4 when there was no power, when she could not call in, and that
5 Dr. Wu did give her a verbal warning as a result of the
6 incident. For that fact, Dr. Wu testified to that in his
7 deposition, as well as at trial on July 16th, 2018, the P.M.
8 Session, at Page 82, Line 12 to Page 83, Line 19.

9 Ms. Briggs contrasts Ms. King's actions with her
10 own failure to notify Dr. Wu, when she was three hours late.
11 And while she had the ability to do so, she chose not to
12 follow protocol. She did not send him an email. She did not
13 call and speak with him directly. She did not call his
14 phone. There are clearing differentiating or mitigating
15 circumstances, as discussed in the Anderson case, between Ms.
16 Briggs' conduct and Ms. King's alleged conduct that
17 distinguishes their treatment.

18 And the January 2014 written warning that Ms.
19 Briggs received for her alleged lateness, in January of 2014,
20 does not constitute an adverse employment actions, and is,
21 therefore, immaterial.

22 Simply stated, the plaintiff has presented no
23 evidence that any other employee, much less an employee in
24 Dr. Wu's reporting structure, engaged in misconduct similar
25 to the misconduct that led to her end of her employment. She

1 identified no other employee who failed to book travel
2 reservations for a visiting professor or hotel reservations
3 for a colloquial speaker, no other employee who engaged in
4 disruptive or disorderly conduct by becoming argumentative
5 and unprofessional with her supervisors, or who failed to
6 complete assignments within the time requested. Without such
7 evidence, Ms. Briggs cannot establish a prima facie case of
8 discrimination.

9 I would point the Court to Crumpton v. Potter, 305
10 F.Suupp 2d 465 (E.D. Pa. 2004). In that case, the Court held
11 that the plaintiff failed to make out a prima facie case and
12 granted summary judgment for the defendant on the defendant's
13 -- plaintiff's discrimination claim because the plaintiff,
14 quote:

15 " -- has not identified any similarly situated, non-
16 protected who was treated more favorably than he."

17 Finally, Dr. Wu's purported comments about --
18 comment about the retirement age for women in China do not
19 give rise to an inference of discrimination because they were
20 wholly unrelated and temporally remote from Ms. Briggs'
21 resignation.

22 THE COURT: Okay. Thank you.

23 MS. SATINSKY: I have more, Your Honor. I
24 apologize. It's --

25 THE COURT: I thought you said "finally."

1 MS. SATINSKY: Oh, the final point on that. It's
2 quite lengthy because Ms. Briggs has a number of claims here,
3 so I do apologize to the Court, but I do need to put this on
4 the record.

5 Regarding -- assuming that Ms. Briggs satisfies a
6 prima facie case, which --

7 THE COURT: How much longer do you have?

8 (Participants confer)

9 MS. SATINSKY: Your Honor, I would gather I
10 probably have another 20 minutes or so.

11 THE COURT: Yeah, no, it's -- I'll hear from the
12 other side.

13 MS. SATINSKY: Your Honor, I do want to make it
14 clear that I am making a motion as to all of Ms. Briggs'
15 claims. I only addressed her claims of gender discrimination
16 and age discrimination. She also has a claim of retaliation,
17 she has two claims --

18 THE COURT: Yeah, I know. But how much time am I
19 going to give you --

20 MS. SATINSKY: I understand --

21 THE COURT: -- to make --

22 MS. SATINSKY: -- Your Honor.

23 THE COURT: -- these arguments?

24 MS. SATINSKY: However, if I don't put this on the
25 record --

1 THE COURT: Please, stop.

2 I'll hear from the other side.

3 MR. MUNSHI: Your Honor, I'll be very brief here.

4 There has been voluminous testimony and documentation in this
5 case to support Ms. Briggs' various claims in this case: Age
6 discrimination, sex discrimination, retaliation, hostile work
7 environment.

8 With regard to the prima facie case, what we
9 already know is that she's in a protected class. The concept
10 that she is not qualified for the position is very much
11 contradicted by the fact that, for example, she was in that
12 position for nine years, essentially, as an executive
13 assistant. We've gone through her performance evaluations,
14 the good performance evaluations as she went through, the
15 reasons why she was put into that position, and so on and so
16 forth, in addition to her own testimony about her good work.

17 With regard to the adverse action that was taken
18 against her, first of all, she was terminated. The April
19 1st, 2014 letter, that's Plaintiff's Trial Exhibit 45,
20 state's in the last sentence, "Effective today, you are
21 terminated." Any resignation letter that happened from Ms.
22 Briggs happened thereafter. And any consideration that it
23 was a forced resignation also constitutes an adverse action.
24 So that standard has certainly been met.

25 There has been voluminous evidence to show

1 causation, with regard to her complaints, with regard to the
2 treatment of -- from Dr. Wu, with regard to the comment, with
3 regard to the disparate treatment in favor of Hailey King,
4 who was a substantially younger employee.

5 And Your Honor, in closing, we believe that this
6 case absolutely should move forward, and that the motion
7 should be denied outright.

8 THE COURT: Summarize the evidence you have to show
9 age discrimination.

10 MR. MUNSHI: With regard to age discrimination,
11 Your Honor, if you recall, we went through the various
12 meetings that Ms. Briggs had with various folks at Temple and
13 the emails that she sent out. Each and every one of them
14 refers back to Dr. Wu's comment, which was a specific age and
15 sex discriminatory comment: Women of a certain age, her age,
16 are put out to pasture in China.

17 His conduct towards her during the period where she
18 was reporting to him, the bullying, the harassment, all of
19 the things that Ms. Briggs testified to, and
20 contemporaneously wrote to everybody at Temple under the sun,
21 shows that he was treating her especially harshly because of
22 her age, stemming from her own comment -- his own comment.

23 You look at Hailey King, who's 28 years old, half
24 of her age, and the disparate treatment that she received.
25 She was out for three days, she disappeared, according to Dr.

1 Wu. She didn't get a written warning. Ms. Briggs, written
2 warning, leads to her termination.

3 There's voluminous evidence that Dr. Wu had a bias
4 against Ms. Briggs, not just because she's an older person,
5 not because she's a female; she's an older woman,
6 specifically.

7 We also have evidence that is, again, in the
8 written documents and in the testimony that Dr. Wu was taking
9 responsibility from Ms. Briggs and giving them to younger
10 workers. We have that in writing and from the testimony.

11 THE COURT: The younger worker?

12 MR. MUNSHI: Yes, in the emails that the jury has
13 seen, there are complaints from Ms. Briggs that student
14 workers and other workers within the staff were receiving the
15 exact job duties that she had been doing for years. Dr. Wu
16 was pushing her out.

17 MS. SATINSKY: Your Honor, if I may. There was no
18 evidence presented that there were email -- there were no
19 emails or other documents that were presented, or any
20 evidence put on to show that Ms. Briggs' responsibilities
21 were given to any other employee, much less someone who was
22 younger or a male.

23 THE COURT: Yeah.

24 MS. SATINSKY: I mean, as to Ms. Briggs' other
25 claims -- and I do have a brief outline, Your Honor, if I

1 could submit it into evidence for your review, if -- it's not
2 a full brief, but I would like to put it into the record.

3 As to Ms. Briggs' retaliation claim, that claim,
4 too, should be dismissed, and Temple is entitled to judgment
5 as a matter of law. Ms. Briggs testified -- the only thing
6 she testified about being retaliated for, or being worried
7 about being retaliated for, was taking leave under the Family
8 and Medical Leave Act. This case is not a Family and Medical
9 Leave Act case; there is no such claim here.

10 The only person to whom she made a complaint of age
11 discrimination, two people: Sandra Foehl and Cameron
12 Etezady. No witness, nobody testified that Cameron or Ms.
13 Foehl played any decision -- played any role in the decision
14 to end Ms. Briggs' employment. In fact, the witnesses all
15 testified that that was the responsibility or the decision of
16 Ms. Walton, Dr. Wu, and in some part Mr. Wacker or Mr. DiMeo.

17 THE COURT: All right. Thank you. I'll take it
18 under advisement. We'll recess for another ten minutes.

19 THE COURT OFFICER: All rise.

20 (Recess taken at 2:45 p.m.)

21 (Proceedings resume at 2:54 p.m.)

22 (Jury not present)

23 THE COURT: Bring them in.

24 I'm going to defer ruling until the end of the
25 case.

1 MS. SATINSKY: I understand, Your Honor. I handed
2 to your deputy I believe --

3 THE COURT: I know that.

4 MS. SATINSKY: I just want to make sure that's part
5 of the record. That's all.

6 THE COURT: All right.

7 MS. SATINSKY: Thank you.

8 (Jury present)

9 THE COURT: The jury may be seated.

10 The plaintiff has rested. And we'll hear at this
11 point from the defense.

12 MR. HARRIS: Your Honor, we decided not to call any
13 witnesses. We're just going to play the deposition
14 transcript -- or, actually, the video transcript of Ms.
15 Briggs.

16 THE COURT: Of Ms. Briggs?

17 MR. HARRIS: Of Ms. Briggs. Correct.

18 THE COURT: All right.

19 MS. MATTIACCI: Your Honor, I'm sorry. But we were
20 just handed these clips right this minute and haven't had a
21 chance to review to see if there are any objections in these
22 particular clips. So we just need to take a minute to see.

23 THE COURT: All right.

24 (Pause in proceedings)

25 THE COURT: Is this going to take long?

1 MS. MATTIACCI: I'm thinking it's going to --
2 looking at all these lines, it might take about 10 minutes to
3 go through.

4 MS. SATINSKY: Your Honor, there's only six clips
5 there from about six -- seven pages. It's not very much.

6 MS. MATTIACCI: They could have given us --

7 MR. MUNSHI: I don't know why they didn't give it
8 to us before.

9 MR. HARRIS: We gave you the same ones that you
10 gave us.

11 (Pause in proceedings)

12 MS. MATTIACCI: Your Honor, I think we're going to
13 have some issues with some of the clips. There's just some
14 cherry-picking.

15 (Pause in proceedings)

16 THE COURT: Is it something we can do at sidebar?
17 I this extensive or what?

18 MS. MATTIACCI: It's -- it's pretty extensive.
19 It's ...

20 (Pause in proceedings)

21 MS. MATTIACCI: Maybe it's just one.

22 THE COURT: Are these objections that were made
23 during the deposition?

24 MS. MATTIACCI: I would -- mostly, it's just that
25 they're just taking little tiny bits without context.

1 (Pause in proceedings)

2 MS. MATTIACCI: Almost there, Your Honor.

3 (Pause in proceedings)

4 MS. MATTIACCI: It's fine, Your Honor. Thank you.

5 THE COURT: Okay. Play it.

6 MR. HARRIS: Thank you.

7 THE COURT: Members of the jury, I'm told that this
8 is a video --

9 MR. HARRIS: Yes.

10 THE COURT: -- deposition. It was under oath,
11 subject to cross-examination taken in the presence of counsel
12 for both sides.

13 You're to give it the same consideration you would
14 give the testimony of the plaintiff if she testified in open
15 court.

16 All right. You may go.

17 (Video Recording played at 3:00 p.m.)

18 (At 3:05 p.m.)

19 MR. HARRIS: With the introduction of defense
20 exhibits, we would rest.

21 THE COURT: All right. At this point, we will have
22 matters to go over with counsel that will not require the
23 presence of the jury. I'm going to excuse the jury at this
24 time.

25 Start tomorrow morning at 9:30. We will start with

1 closing arguments, then the charge of the Court, and then you
2 will get the case to decide.

3 With that, the jury is excused until 9:30 tomorrow
4 morning.

5 (Jury excused)

6 THE COURT: Any points --

7 MS. SATINSKY: Yes, Your Honor. I'd like to renew
8 my motion, the Rule 50(a), judgment as a matter of law
9 motion.

10 THE COURT: All right. Denied.

11 MR. MUNSHI: And we'd like to put a motion on the
12 record as well for a directed verdict under the same rule.

13 THE COURT: Both denied.

14 Any further -- you wish to discuss any points for
15 charge?

16 MS. MATTIACCI: Yes, Your Honor. There's great
17 disagreement between the points for charge and the verdict
18 sheet.

19 THE COURT: Everybody please sit down.

20 We're looking at defense points at this time? Is
21 that what you wanted to object to?

22 MS. MATTIACCI: Well, I -- if -- I'd prefer to go
23 with plaintiff's points, and then --

24 THE COURT: Well, you were the one that spoke up.
25 So --

1 MS. MATTIACCI: Okay. Your Honor, plaintiff's --
2 we just follow the model rules, the Third Circuit model
3 rules. Are you okay if I sit down, Your Honor, when I speak?

4 THE COURT: All right. That's fine.

5 MS. MATTIACCI: Okay. We don't make any
6 modifications to them, other than to put in the
7 specifications about the case.

8 THE COURT: Any modifications to what?

9 MS. SATINSKY: Your Honor, may I be heard?

10 MS. MATTIACCI: I was saying, Your Honor, that
11 plaintiff's set of proposed jury instructions follow the
12 model rules, Third Circuit model rules with very little
13 modification, other than just the specification of the case.

14 In contrast, the defendant's proposed jury
15 instructions come from various sources. And I don't know how
16 Your Honor would like to go through it, but they do follow,
17 for example, an age discrimination charge --

18 THE COURT: I've been through them several times.

19 MS. MATTIACCI: Oh, you have. Okay.

20 THE COURT: Well, you think I sit here doing
21 nothing? I've been over them and over them.

22 MS. SATINSKY: Your Honor -- Your Honor, if I may,
23 as to the plaintiff's instruction, the key problem with the
24 instructions that are presented by plaintiff is that
25 plaintiff has only offered a set of instructions under Title

1 7. The plaintiff has not offered a set of instructions under
2 the ADEA. So --

3 THE COURT: You know, I thought --

4 MS. SATINSKY: -- or a -- or a retaliation charge.
5 She has clumped everything together.

6 As Your Honor knows, there are different elements
7 to a retaliation claim than to a discrimination claim. And
8 there's different causation standards.

9 THE COURT: Yeah -- stop. At one point I thought
10 maybe you withdrew part of this.

11 MS. MATTIACCI: Your Honor, I'm sorry. I --

12 MR. HARRIS: We were hoping so.

13 MS. MATTIACCI: Well, yes. Definitely did not
14 happen.

15 Model -- we have a Title VII retaliation claim,
16 5.17 that we put the retaliation charge into. And then 5.21,
17 the hostile environment charge. I thought we had the ADEA
18 charge, but I will -- that would be a mistake if we didn't.

19 THE COURT: Well, let's concentrate on the defense
20 points.

21 MS. MATTIACCI: Okay.

22 THE COURT: And then start on defendant's proposed
23 Point Number 15.

24 MS. MATTIACCI: I have no objection to that, Your
25 Honor.

1 THE COURT: And 16?

2 MS. MATTIACCI: We'd prefer to stick with the model
3 rule that says determinative factor.

4 THE COURT: Yeah. But that doesn't stick with the
5 law, does it?

6 MS. MATTIACCI: It should be, "the determinative
7 factor," not "a determinative factor."

8 But "the reason" I think is misleading because it's
9 not -- it's not the sole reason. There can be other reasons.
10 So I feel by putting that -- the new verbiage of "the reason"
11 is wrong.

12 The Courts are adjusting it to say, "the
13 determinative factor." And then the instruction follows.

14 MS. SATINSKY: Your Honor, there is a Supreme Court
15 case that plaintiff actually cited in her summary judgment
16 motion about the but for cause standard. My colleague is
17 helping me pull that up right now. I don't have it right in
18 front of me.

19 Under that case -- so that's a criminal case and it
20 talks about but for causes. And what that case says is that
21 it doesn't have to be the only cause, but you can't have two
22 but for causes be the reason for an adverse action. So the
23 plaintiff can't have -- there can't be a finding for the
24 plaintiff under the ADEA and for retaliation because both of
25 those standards are but for cause standards.

1 I think if we change it to -- we may be able to
2 come up with some other language here, but the reason that we
3 struck "determinative factor" is, as Your Honor said, that's
4 inconsistent with the law, and also "a determinative factor"
5 is the language used in the Title 7 model jury instruction.
6 So there is a clear difference between the standards.

7 THE COURT: Yeah. There's going to have to be --
8 that's -- the troubling thing for me, anyway, is that I'm
9 going to end up giving rather extensive charges on both Title
10 7 and age discrimination because of that -- the difference in
11 the -- but I am -- I think 16 is all right the way it's
12 written.

13 MS. MATTIACCI: Your Honor, may I -- I have to
14 lodge my strong objection to the concluding instruction there
15 that says:

16 "Ultimately, you must decide whether Ms. Briggs has
17 proved that her age was the reason Temple
18 University decision" -- "for Temple University's
19 decision to end her employment."

20 It's -- it's not -- I mean, if that's going to be
21 said, then I would ask that the Court also specifically
22 advise that it does not have to be the sole reason for the --
23 for the decision, because it does not have to be the sole
24 reason. That's undisputed. That's clear-as-day precedent.
25 So we can't have sole reason even be thought of.

1 MS. SATINSKY: Your Honor, like I said, the
2 plaintiff can't have a retaliation claim and an age claim
3 because they are both but for cause standards. I agree it
4 doesn't have to be the reason, but the other reasons cannot
5 also be but for cause reasons.

6 So if Your Honor would want to change the language
7 of this, I would need just a moment to think about it because
8 I don't like the words "but for" because I think that's
9 confusing to a jury and I think it's legalese.

10 I also don't believe there's any support for the
11 plaintiff's proposition.

12 MS. MATTIACCI: Your Honor, the sole cause, we can
13 provide Your Honor with a mountain of case law on the sole
14 cause issue. That's been clearly decided and settled
15 precedent.

16 MR. MUNSHI: Miller v. CIGNA, Your Honor. Third
17 Circuit 1995. It's clear.

18 MS. SATINSKY: That's pre-Gross, Your Honor.

19 THE COURT: Pardon?

20 MS. SATINSKY: That's before the Gross decision,
21 Your Honor.

22 THE COURT: Yeah.

23 MR. MUNSHI: We're still in the Third Circuit model
24 jury instructions and it cites to it.

25 MS. MATTIACCI: Yeah. But even Gross clearly --

1 THE COURT: Haven't they been upgraded?

2 MR. MUNSHI: They have been.

3 THE COURT: Yes?

4 MS. SATINSKY: No, I have nothing right now, Your
5 Honor.

6 THE COURT: Okay.

7 MS. SATINSKY: Your Honor, the Supreme Court case
8 that I was referencing that Ms. Briggs cites in her summary
9 judgment motion is Burrage - B-u-r-r-a-g-e -- v. United
10 States, 571 U.S. 204 (2014).

11 THE COURT: What is that for?

12 MS. SATINSKY: Your Honor, that case says that, if
13 there is a but for causation on something, it does not have
14 to be the only reason, but the other reasons cannot also be
15 but for reasons. So, for that reason, the plaintiff can't
16 prevail on an age claim and a retaliation claim because they
17 both can't be the but for reason for their termination.

18 MS. MATTIACCI: That is a ludicrous result under
19 the law.

20 THE COURT: Yeah, I --

21 MS. MATTIACCI: How could that even be possible?
22 Then a person that has been discriminated against based upon
23 age, and also retaliated against, would not have recourse in
24 the Courts of the United States? That cannot be the --
25 that's not the intention of the law, nor a logical result.

1 MS. SATINSKY: Your Honor, there is --

2 THE COURT: All right. Enough. 19?

3 (Pause in proceedings)

4 THE COURT: Any objections to that?

5 (Pause in proceedings)

6 MS. MATTIACCI: I would again ask that -- Your
7 Honor, that the jury be instructed that it does not have to
8 be the sole reason, and that there could be other reasons
9 that led to the discharge.

10 THE COURT: All right. I will take that --

11 MS. SATINSKY: And Your Honor understands our
12 position.

13 THE COURT: I will take that under advisement.

14 (Participants confer)

15 MS. MATTIACCI: And Your Honor, is -- I just wanted
16 to make sure I understand this 19. Is the underlined part
17 added by you?

18 MS. SATINSKY: It is.

19 MS. MATTIACCI: Okay.

20 MS. SATINSKY: Anything that's underlined is added.

21 MS. MATTIACCI: We don't -- we object to the
22 additional, the added parts to this instruction, Your Honor.
23 I think that the Model Jury Instruction is sufficient.

24 THE COURT: Number 20, damages.

25 MS. MATTIACCI: I would object to this. I think

1 this is going to be very confusing to the jury. I don't
2 believe that they're going to be -- they need to know whether
3 they're awarding it under a specific statute. I think the
4 way the jury verdict form will be set up will lead them to
5 the conclusion of -- if they -- because, if they find for age
6 and nothing else, they're not going to get a question asking
7 them for compensatory amounts, so they won't ever be facing
8 that.

9 MS. SATINSKY: Your Honor, we ask this instruction
10 be included because compensatory damages are not recoverable
11 under the ADEA, that's very clear; they are under Title VII.
12 And because of the various claims that Ms. Briggs has
13 brought, the jury is going to need to understand that there
14 are different types of damages recoverable under different
15 statutes.

16 MS. MATTIACCI: Well, actually, they don't need to
17 know that because we also have a PHRA claim, and the age --
18 if they find for age under the PHRA --

19 THE COURT: Okay. I don't plan to give that
20 charge, unless -- I may change my mind, of course.

21 MS. MATTIACCI: Well, can I just --

22 THE COURT: But I think that --

23 MS. MATTIACCI: -- say that the PHRA has the age
24 claim that you can get compensatories under the PHRA, if they
25 find for age.

1 THE COURT: All right. Back pay? You didn't go to
2 any great effort to show details of the lost wages.

3 MS. MATTIACCI: We did, Your Honor. We introduced
4 --

5 THE COURT: Well, I mean, I know what you did.

6 MS. MATTIACCI: Yeah.

7 THE COURT: But it's been very general.

8 MS. MATTIACCI: It's very general, yes. But I
9 mean, it's -- we have all of the documented evidence of it,
10 so that we have -- for closing, we can be more specific with
11 the back pay and the front pay. But we have pay records and
12 the interrogatory responses of the defendant as to the
13 damages.

14 THE COURT: Liquidated damages?

15 MS. MATTIACCI: We object to the additional
16 language that they have inserted there.

17 MS. SATINSKY: Your Honor, liquidated damages are
18 only recoverable under the ADEA; they're not recoverable
19 under Title VII, they're not recoverable for a harassment
20 claim. The jury needs to be keenly aware that, if they find
21 for the plaintiff on a claim, other than her age claim, they
22 are not to award liquidated damages. That is only if they
23 find for the plaintiff on an age claim.

24 THE COURT: All right. I agree.

25 MS. SATINSKY: Your Honor, if I may just go -- I

1 apologize, we're not there. My apologies.

2 THE COURT: Front pay damages.

3 MS. SATINSKY: Yes, Your Honor. Ms. Briggs
4 testified yesterday that she has not looked for employment
5 since she secured her job in 2016. There is case law for
6 that proposition that says that your front pay is cut off
7 when you start looking for -- when you stop looking for a
8 job, after you've secured employment. Her testimony is clear
9 on that, that's included in this judgment as a matter of law,
10 memo that I submitted.

11 MS. MATTIACCI: Your Honor, I don't -- one, that's
12 not the standard. The defendant has the burden of proving
13 mitigation, and the defendant must present substantially
14 equivalent positions that are, one, available; and, two, that
15 the plaintiff unreasonably failed to avail herself of. The
16 defendant has wholly failed to meet its burden on this point.
17 To the extent there's a motion on it, it would be that they
18 have --

19 THE COURT: Do we give --

20 MS. MATTIACCI: -- presented zero --

21 THE COURT: the front pay --

22 MS. MATTIACCI: -- evidence on the --

23 THE COURT: -- issue to --

24 MS. MATTIACCI: -- in the case on --

25 THE COURT: -- the jury?

1 MS. SATINSKY: Under the age claim, yes, but not
2 under the gender discrimination claim --

3 THE COURT: All right.

4 MS. SATINSKY: -- or gender retaliation. Your
5 Honor, the support for my position is 959 F.2d 454, 2007 U.S.
6 Dist. LEXIS 62492, 2007 --

7 THE COURT: Please stop.

8 (Participants confer)

9 THE COURT: Do you think I'm sitting here, reading
10 -- writing these down?

11 MS. SATINSKY: No, I just -- I wasn't sure if Your
12 Honor was going to read back the transcript. I just wanted
13 to make sure we had citation support.

14 THE COURT: Nominal damages, 24.

15 MS. MATTIACCI: I don't have an objection, Your
16 Honor.

17 THE COURT: What is that?

18 MS. MATTIACCI: No objection.

19 THE COURT: Oh. 25? This is the start of Title
20 VII.

21 MS. MATTIACCI: No objection, Your Honor.

22 THE COURT: 26.

23 (Pause in proceedings)

24 THE COURT: 27?

25 (Pause in proceedings)

1 THE COURT: 28.

2 (Pause in proceedings)

3 THE COURT: And 29, retaliation.

4 MS. MATTIACCI: Yes, Your Honor. We object to the
5 additional language that was imposed by defendant here, at
6 the bottom of 29.

7 (Pause in proceedings)

8 THE COURT: All right. I may not read that section
9 that's underlined.

10 And Title VII, compensatory damages and nominal
11 damages. This will make for an interesting verdict form.

12 Tomorrow morning, hopefully at 9:30, then we'll
13 have closing arguments. They are not to exceed 35 minutes.
14 Plaintiff may reserve 5 minutes for rebuttal. And I will
15 tell you when your time is up.

16 Anything further?

17 MR. HARRIS: No, Your Honor.

18 MS. MATTIACCI: Yes, Your Honor. We wanted to
19 submit a jury instruction that -- we thought we did -- but is
20 for punitive damages under Title VII.

21 THE COURT: I'm not charging on punitive damages.

22 MS. MATTIACCI: Okay. So you're denying that
23 motion.

24 THE COURT: That's right.

25 MS. MATTIACCI: Okay. Thank you.

1 THE COURT: Anything else.

2 MS. SATINSKY: No, Your Honor.

3 MR. HARRIS: No, Your Honor.

4 THE COURT: All right. I -- counsel should be here
5 at nine o'clock.

6 MS. MATTIACCI: Your Honor, I'm sorry. For
7 clarification regarding the verdict sheet, what was the end
8 result there?

9 THE COURT: What is it? What do you mean?

10 MS. MATTIACCI: Are you -- we submitted competing
11 verdict sheets.

12 THE COURT: Yeah, right. I'm not quite satisfied
13 with either one.

14 MS. MATTIACCI: Okay.

15 THE COURT: I'm in the process of making my own up.

16 MS. MATTIACCI: Okay. So then will we have that
17 tomorrow morning?

18 THE COURT: Yeah, you'll probably have it. You
19 may.

20 MS. MATTIACCI: Okay. I just wanted to know, if
21 you do, I -- and I didn't know if we'd be permitted to use
22 it as part of our closing.

23 THE COURT: I'm not sure now.

24 MS. MATTIACCI: Okay. All right. Thank you very
25 much.

1 THE COURT: All right. Nine o'clock tomorrow
2 morning.

3 MR. HARRIS: Thank you.

4 MS. MATTIACCI: Thank you, Your Honor.

5 MS. SATINSKY: Thank you.

6 THE COURT: Or be here, anyway.

7 THE COURT OFFICER: All rise.

8 (Proceedings adjourned to 7/19/18)

9 (Concluded at 3/27 p.m.)

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1 CERTIFICATION

2 We certify that the foregoing is a correct
3 transcript from the electronic sound recording of the
4 proceedings in the above-entitled matter to the best of our
5 knowledge and ability.

6

7 Transcriptionists: Cathryn Renzoni, William J. Garling, and
8 Coleen Rand

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July 18, 2018

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